

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WILLIAM ORLANDO SMITH,

Petitioner,

v.

CIVIL ACTION NO. 2:22cv142

COMMONWEALTH OF VIRGINIA,

Respondent.

FINAL ORDER

Before the Court is an Amended Petition for a Writ of Habeas Corpus, ECF No. 5, filed pursuant to 28 U.S.C. § 2254, Respondent's Motion to Dismiss, ECF No. 10, and Petitioner's Motion for Default Judgment, ECF No. 14. On December 29, 2004, Petitioner was convicted of rape and abduction with intent to defile in the Chesterfield County Circuit Court. Petitioner was sentenced on March 29, 2005, to an active sentence of forty-five years plus life. In his Amended Petition, the *pro se* Petitioner challenges the constitutionality of this conviction and sentence.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on July 6, 2023, ECF No. 16, the Magistrate Judge recommended that Respondent's Motion to Dismiss be granted, the Amended Petition be denied and dismissed without prejudice, and that Petitioner's Motion for a Default Judgment be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed

objections with the Court.

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 16, in its entirety as the Court's own opinion. Accordingly, the Respondent's Motion to Dismiss, ECF No. 10, is **GRANTED**, and the Amended Petition, ECF No. 5, is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. Additionally, Petitioner's Motion for a Default Judgment, ECF No. 14, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.


/s/
Elizabeth W. Hanes
United States District Judge

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United States District Judge

Norfolk, Virginia
Date: August 10, 2023